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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

RICHARD KADREY, *et al.*,
 	
   Individual and Representative Plaintiffs,
 	
    v.
 	
META PLATFORMS, INC., a Delaware corporation;
 	
                   Defendant.
	Case No. 3:23-cv-03417-VC-TSH
	
	DECLARATION OF PROFESSOR MICHAEL SINKINSON, PH.D. IN SUPPORT OF META'S REPLY IN SUPPORT OF ITS MOTION FOR PARTIAL SUMMARY JUDGMENT

COOLEY LLP
ATTORNEYS AT LAW

I, Michael Sinkinson, Ph.D., declare:

1.   I am over the age of 18 and am competent to make this declaration. I have been engaged by defendant Meta Platforms, Inc. ("Meta") as an economist to provide my opinion regarding certain economic factors relevant to fair use. I submitted an opening expert report in this case on January 10, 2025 and a rebuttal report on February 3, 2025, and was deposed in this matter on March 4, 2025. I submitted a declaration on March 24, 2025 (Dkt. 491) in support of Meta's motion for partial summary judgment.

2.   My declaration of March 24 provided a subset of the opinions set forth in the two expert reports that I provided in this matter, which I understand was cited by Meta in a motion for partial summary judgment on the issue of fair use.

3.   I understand that Plaintiffs have responded to Meta's motion by arguing that agreements between AI companies and news publishers or online platforms (such as Reddit) provide evidence that there is a market for licensing Plaintiffs' books as training data.

4.   Accordingly, I have been asked to submit the following reply declaration to include opinions from my previously-served expert reports that were not included in my March 24 declaration. As I covered in my expert reports, I explain why deals for other types of data (such as news) are not germane to the question of whether a market for licensing Plaintiffs' books as training data exists or is likely to exist. As with my March 24 declaration, for convenience and ease of reference, I have included footnotes in each paragraph or section below indicating where the text below appears in my Opening and/or Rebuttal reports.

5.   As explained below, in my opinion, news content (such as one would read in the New York Times or The Wall Street Journal) and online text data such as posts on Reddit are of a fundamentally different type and character from Plaintiffs' books (or other trade books), and deals for access to such data are not informative or evidence of the existence of a licensing market for using Plaintiffs' books (or other trade books) as training data.[1]

6.   Starting with news content, users read news publishers' content primarily to gather information that is relevant to them and to stay informed on what is happening locally, nationally,

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[1] Sinkinson Opening Report ¶ 226; Sinkinson Rebuttal Report ¶ 17.

and internationally. News content is consumed for a different purpose than trade books. Most news content is factual, and, as the name implies, is considerably more valuable to consumers when it is timely. The value of news content decays rapidly over time, as the factual content becomes less relevant, less accurate, or becomes more widely disseminated. For example, a month-old weather forecast contains negligible value for the typical consumer, whereas the current weather forecast is likely to provide considerable value.

7.   Trade books, on the other hand, are often not consumed for their timeliness, nor for their factual content. This is evidenced by the fact that many trade books are consumed decades or even centuries after they are written. Moreover, many trade books contain little or no factual information; this may even be viewed as a positive aspect of these works for their consumers.[2]

8.   Additionally, differences in copyright ownership structure between news content and trade books make AI training data licensing deals for news content less likely to succumb to market failure. News publishers provide "one-stop-shopping" for access to very large quantities of textual data; thus, a news publisher can, with a single agreement, provide an LLM developer with access to an enormous set of textual data for AI training, in some cases, with content dating back several decades. Major news providers have vast archives of text data, for example, the New York Times Archive has more than 13 million articles dating back to 1851,[3] and can grant LLM developers access to this large corpus in one transaction. Thus, a single negotiation with a news publisher can provide an LLM developer with access to the same volume of AI training data that would potentially take thousands of negotiations to acquire through licensing trade books.[4] Access to these types of media may also be behind paywalls or otherwise subject to platform terms of service.[5]

9.   By way of example, I discussed in my Rebuttal Report a ▮▮▮▮▮ agreement between ▮▮▮▮ and the ▮▮▮▮▮▮▮ ("▮▮"), which I understand was obtained by the Plaintiffs and was discussed by Plaintiffs' expert, Dr. Spulber. That agreement, a ▮▮▮▮▮▮

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[2] Sinkinson Opening Report, ¶¶ 244-245.
[3] *See* <https://archive.nytimes.com/www.nytimes.com/ref/membercenter/nytarchive.html> (cited in Sinkinson Report, ¶ 237 & n. 441.)
[4] Sinkinson Opening Report, ¶¶ 236-238; ; *see also* Sinkinson Rebuttal Report, ¶ 18.
[5] Sinkinson Rebuttal Report ¶ 17.

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20   10.   For many of the same reasons, deals to obtain access to content from online

21 platforms such as Reddit are not evidence of a licensing market for using Plaintiffs' books (or other

22 trade books) as training data. Unlike books, Reddit posts are primarily user-generated and short-

23 form content provided by millions of users throughout the world on a vast range of topics, and

24 provided for online engagement. Unlike books, Reddit posts comprise posts with replies following

25 a more conversational structure and tone, and like news content, Reddit posts often focus on current

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[6] Sinkinson Rebuttal ¶ 28.

1   events or issues.[7] A deal with an online platform such as Reddit, like large news publishers, may

2   also offer a "one-stop shop" for an AI company to acquire access to a large quantity of text content.[8]

3   11.   As part of my Opening and Rebuttal Reports, I also analyzed a █████████

4   ██████████████████████████ between ███████ and ██████████████████

5   (reflected in Exhibit 139 to the Pritt Declaration). I am unaware of any testimony from ████████

6   or ██████████████████ regarding this agreement. In my opinion, this agreement ████████

7   ██

8   ██

9   ██

10   ███.[9]

11   12.   All of these facts underscore the substantial uncertainties and transaction costs

12   involved, and are not affected by the existence of this single agreement. If anything, absent

13   evidence of overwhelming buy-in by authors, as well as adoption of this type of agreement by many

14   other publishers covering a sufficiently large number of books (given the enormously large number

15   of tokens needed to train an LLM such as Llama), this agreement evidences the market failure I

16   described in my March 24, 2025 declaration, insofar as the transaction cost of negotiating such a

17   license would exceed any negligible value to be obtained from a limited number of additional books

18   being made available for training.[10]

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20   I declare under penalty of perjury that the foregoing is true and correct. Executed on this

21   17th day of April, at Evanston, Illinois.

22   /s/ _____
     Prof. Michael Sinkinson, Ph.D.

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27   [7] Sinkinson Opening Report, ¶ 251; Sinkinson Rebuttal Report, ¶ 18.
     [8] Sinkinson Rebuttal Report, ¶ 46.
28   [9] Sinkinson Rebuttal Report ¶¶ 73, 75.
     [10] Sinkinson Rebuttal Report ¶ 75.